

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

Stanley Felder, #284425,)	C/A NO. 8:11-2158-CMC-JDA
)	
Petitioner,)	
)	OPINION and ORDER
v.)	
)	
Bernard McKie,)	
)	
Respondent.)	
_____)	

This matter is before the court¹ on Petitioner's motion for voluntary dismissal. ECF No. 30 (filed Aug. 16, 2012). Respondent has filed a response to Petitioner's motion, arguing that dismissal should be with prejudice or moving in the alternative for summary judgment on the merits. ECF No. 32.

Despite being provided specific notice and warning that dismissal of this petition may significantly prejudice his ability to have a future petition for writ of habeas corpus considered on the merits in this court, Petitioner specifically moves for dismissal of this petition under Federal Rule of Civil Procedure 41(a).

Therefore, the undersigned grants Petitioner's motion and dismisses the petition without prejudice. Respondent's motion for summary judgment is hereby deemed moot.

¹Petitions for writ of habeas corpus are, pursuant to the Local Rules of this Court, referred to a Magistrate Judge of this District for pretrial proceedings. *See* Local Civil Rule 73.02 (B)(2)(c), DSC. However, in the interest of time, the undersigned withdraws the reference and proceeds to address Petitioner's motion without the aid of a Report and Recommendation.

CERTIFICATE OF APPEALABILITY

The governing law provides that:

(c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.

(c)(3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c). A prisoner satisfies this standard by demonstrating that reasonable jurists would find this court's assessment of his constitutional claims is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In this case, the legal standard for the issuance of a certificate of appealability has not been met. Therefore, a certificate of appealability is **denied**.

IT IS SO ORDERED.

s/ Cameron McGowan Currie

CAMERON MCGOWAN CURRIE

UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
September 5, 2012